ORIGINAL

No. 18-8511

IN THE

SUPREME COURT OF THE UNITED STATES

In re Victoria and Stephen Carlson — PETITIONERS

vs.

Tony Lourey, Commissioner, Minnesota Dept. of Human Services— RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI TO

MINNESOTA SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

Victoria and Stephen W. Carlson

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QUESTION PRESENTED

Whether the Minnesota Supreme Court erred by concluding in *In re Victoria and Stephen Carlson* (A18-1578, Minn. 2018)--in conflict with the decision of this Court in *Goldberg v Kelly* (1970) and innumerable cases in that line of decisions; and with the decision of the 8th Circuit case *Pediatric Specialties v. ADHS* (2004)--that a county Agency and Minnesota Department of Human Services (MNDHS) need not continue to pay Medicaid medical assistance breast and cervical cancer benefits ("BCCPTA" and "MA-BC") to an appellant who has attained a favorable commissioner's decision reversing the unlawful termination of her federal Medicaid and breast cancer treatment benefits, and ordering the continuing payment of MA-BC benefits while that appeal is still pending unresolved and while the appellant remains in uncompleted cancer treatment under the BCCPTA program.

PARTIES TO THE PROCEEDING

Petitioners Victoria and Stephen Carlson were the Petitioners in the mandamus proceeding below (Petition for Mandamus pursuant to Minn.Stat. Ch.586).[1] The Respondents were *Tony Lourey*,[2] Commissioner of the Department of Human Services (MNDHS); *Tina Curry*, *Ebony Phillips*, and *Teryl J.* in their official capacities as Director, Lead Financial Worker and Case Worker, respectively, of Ramsey County Community Human Services (the "Agency"); and *Ramsey County District Court* and Hon. *Shawn Bartsh* in her official capacity as presiding judge on judicial review of the administrative proceeding against the Agency and MNDHS pursuant to Minn.Stat.256.045 subd. 7.

[1] Exclusive original jurisdiction in the Minnesota Court of Appeals pursuant to Minn.Stat.586.11 "when the writ is directed to the district court or a district court judge in the judge's official capacity" as was the case here.

[2] Substituted for former Commissioner Emily J. Piper.

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JURISDICTION

(i) the date the judgment or order sought to be reviewed was entered - **December 18, 2018, Minnesota State Supreme Court**

(ii) N/A/

(iii) N/A

(iv) the statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the judgment or order in question - 28 U.S.C. 1257(a) "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be

reviewed by the Supreme Court by writ of certiorari...where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution...or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the...statutes of, or any...authority exercised under, the United States."

(v) N/A

FEDERAL AND STATE STATUTORY, REGULATORY AND CONSTITUTIONAL PROVISIONS INVOLVED

Portions of the following relevant provisions are set out in the 14.11(i)(v) Appendix at Pet.App.27a-xa: 42 U.S.C. §§ 1396a(3)-(4); 1396a(a)(10)(A)(i),(B),(C); 1396a(a)(30)(A); 1396a(aa); 1396c; 1396(b)[1903(f)same]; 42CFR§§431.220(a)(1), ; U.S. Const. Art. § 3; Ams. §§ 1, 5, and 14.; Minn.Stat. §§ 586.01-12, 256.045subd.(5),(7),(10), Minn.Stat.256B.057(a)-(c), 256B.055, 256.0451(16); 42 CFR §§431.220(a)(1), 431.232, 431.246, 431.241, 431.206, 431.210, 431.242 ; Mn.R §§ 9505.0130 subp.1,3, 9505.0135 Subp. 1,2.

OVERVIEW

This cert petition comes to the Court from the Mn.App. denial *In re Victoria and Stephen Carlson* (A18-1578Mn.App.2018), Pet.App.1a4a of our Petition for Mandamus[2] to which Petitioners are clearly entitled by Minnesota statute, *Ch.586Mandamus* and *Minn.Stat.§256.045subd.5*,[3] which if granted by the state courts would have enforced the Commissioner's June 8, 2017 order[4] in the evidentiary hearing Docket No. 185231 to restore and continue payments[5] for needed medical care pending appeal *Pet.App.8aPara5* for breast cancer treatment[6] through the Medicaid medical assistance as she was enrolled in *Minn.Stat.§256B.057*. Now she's undercovered and her medical care degraded. *Pet.App.10aCL8.*[7] Because there was a second HSJ Kralik brought in basically to unlawfully replace HSJ Longfellow, we will refer to the first final appealable decision--the only evidentiary hearing decision--as the "Longfellow Decision". The reason we are at the

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[2] Excerpted at Pet.App.1(i)(vi).

[3] Providing for adoption and enforcement of the HSJ Recommendations by the Commissioner, binding on the Agency. Pet.App.39a.

[4] "The Agency has reopened the Appellant's Medical Assistance for Breast Cancer from January - April 2017 and should extend that to May 2017 while the appeal is pending and until the Agency can provide adequate notice of the program change to the applicants" Id. Emph.added. "Adequate notice" is critical here, because the Commissioner ruled it was not provided as *Goldberg* requires for the evidentiary hearing, i.e. it was not provided in Ramsey County's Agency Appeal Summary required by *Minn.Stat.§256.0451subd.3* Pet.App.41a

[5] Pursuant to *Minn.Stat.§256.045subd.10* Pet.App.38a "If the commissioner of human services or district court orders monthly assistance or aid or services paid or provided in any proceeding under this section, it shall be paid or provided pending appeal to the commissioner of human services, district court, court of appeals, or supreme court."Emph.added

[6] Projected by the doctor to continue to November 2020.

[7] "The Appellant makes a compelling argument that the spenddown effectively bars her from obtaining continued medical treatment for her breast cancer...The Appellant contends that this violates her civil and constitutional rights. Unfortunately, the law does not permit me to address constitutional claims. *Minn.Stat.§256.0451, subd. 16*". Pet.Add.40a41a.Emph.add

Mn.App. right now with A18-1380 is because Respondents wrongfully deceive the courts by pretending Kralik somehow impeded the effect of and voided this Longfellow Decision (which we actually support in her disposition of the wrongful actions of Respondents, because she clearly reversed the terrible, irrational decisions of the Agency we were given notice of only October 5, 2016. It didn't make any more sense to Petitioners than it did to Longfellow.)

Longfellow provided that there be a fair hearing appeal see *Minn.Stat.256.045subd.3* *Pet.App.42a*[8] in which the Agency would provide Petitioners adequate notice:

> "It ["the Agency"] will need to provide adequate notice now to take her off of the Breast Cancer Program and enroll her in the Elderly program." Id.*Pet.App.9aFF10*

By this order the Commissioner gave jursidiction to the Appeals Office to conduct this specific hearing on this specific matter should we appeal. But the Agency has not allowed an appeal, has refused to cooperate (see *Pet.App.25a* Agency's July 31, 2017 notice saying "No further responses will be made regarding your request for MA/BC reinstatement as you are not eligible for this program and you have exhausted the appeals process for this program."--and on July 5, 2017

[8] Because the July 1, 2017 termination of Victoria's MA-BC "suspended, reduced, terminated, or claimed to have been incorrectly paid" her assistance the Minnesota law, obligated to follow federal requirements *infra,* must be available. We believe it must be available after the notice (which was not adequate as required by Longfellow) and before the deprivation. We are not trying to bring the whole merits appeal up to this Court, but to describe the appeal we have taken and the failure of the Respondents to resolve it according to law and the order to pay Victoria pending appeal enforced.

had sent two additional notices calling our June 23, 2017 appeal of their June 15, 2017 notice that they would terminate all Victoria's MA-BC effective July 1, 2017), and, as concerns this cert petition, would not provide MA-BC payments pending appeal as ordered or any appeal. *Pet.App.25a29a*.

The agency simply refused, unilaterally, to proceed according to the results of the evidentiary hearing, refusing to provide an Appeals Summary pursuant to *Minn.Stat.256.0451Subd.3* *Pet.App.41a* frustrating the intent of the Commissioner in *Pet.App.6a10a*.

The serious injury to the rights of Victoria is obvious. The only question we are attempting to resolve now, and it should be resolved while Victoria continues to receive the promised MA-BC coverage, pending appeal at the Minnesota Court of Appeals[9] is this--is the Agency treating Petitioners substantially the way Congress and the Legislature intended for enrolled breast cancer patients and is this what the Constitution of the U.S. (or Minnesota) allows? And the answer is obviously not. This is not the way the Medicaid Act 42 Title XIX to the Social Security Act, 42 U.S.C. §§ 1396 et seq. as amended contemplates her coverage will be handled, when Congress says it wanted to provide "appropriate treatment" for breast cancer.[10] We will

[9] As we write this, we await the Respondent Briefs as ordered by that Court. Victoria is currently receiving no MA-BC payments pending that ongoing appeal.

[10] 146 Cong. Rec. H2687-01, 146 Cong. Rec. H2687-01, H2689-90, 2000 WL 561119

show Victoria is not meant to be terminated from BCCPTA coverage, and while we are doing that to remedy her treatment she needs the benefit of the clear duty of Respondents under the law. We'll cite cases and law to establish this.

Again, the instant cert petition only brings up to this Court the Petition for Mandamus. We challenge the action of the Mn.App. finding at *Pet.App.4a* that "Carlson is not entitled to continue receiving MA-BC benefits during the appeal to this Court." Emph.added

We file this Petition not because Victoria is in cancer treatment which we feel is quite urgent, and she is in a health disparities program, BCCPTA/MA-BC that has saved her life. But this requires the coverage she is entitled to and at this point, she is wrongfully deprived of the needed MA-BC benefit payments, although ordered by the Commissioner, and this deprivation is founded on what appear to us a bizarre series of events. The Agency has repeatedly admitted, to judges and courts, multiple wrongful acts of benefits deprivation, each of which has erroneously treated Victoria as if she is not an eligible recipient.

We think this action October 16, 2018 by Judge Worke and her panel, which we ask this Court to review and correct, is another one of those terrible mistakes. These are precisely the disparate burdens described by the CDC as "preventable differences in the burden of

disease, injury, violence, or opportunities to achieve optimal health that are experienced by socially disadvantaged populations."[11] The low-income women screened for breast cancer and granted the benefits by Congress gain relief from the these preventable differences in incidence and mortality from breast cancer when denied appropriate treatment. First, Victoria was been denied coverage for the completion of her treatment, and now, with the erroneous approval of the Minnesota Supreme Court, she is forced to seek the lawful remedy of appeal amid brutal need, bereft of her medical care payments previously provided to her, while she is seeking a final disposition of her rights and entitlements to receive that vital aid. And this Court should grant certiorari and give her the status quo ordered by Longfellow while she seeks to vindicate her legal rights and entitlements.

Respondents created a Constitution-free zone in windowless hearing rooms where cancer patients face faceless bureaucrats on the phone speaker defended by hired administrative agents called HSJs to defend their financial interests in flawed cancer care coverage programs--against the very patients the programs are intended to benefit. They seek to prevail over uncounseled patients by relying on

[11] Community Health and Program Services (CHAPS): Health Disparities Among Racial/Ethnic Populations. Atlanta: U.S. Department of Health and Human Services; 2008

denying them specific protections granted by law and Constitution during their period of brutal need. Much of this harm has been accomplished by abuses like the wrongful application of *Younger v. Harris*, 401 U.S. 37 (1971) in the 8th Circuit. Protected from federal court scrutiny of any Minnesota administrative practices and proceedings as uncovered in *Sprint Communications, Inc. v. Jacobs*, 571 U. S. ___ (2013) and *Carlson, Stephen W. v. MN Dept. of Employment, 13-8124 U.S. (2013) infra.* and with the Minnesota Legislature creating laws like Subd.16 *supra*, that abridge basic protections against wrongful deprivation. The bureaucrats are completely unaccountable and they can just stuff the patients every time, no one challenges them, no one helps the low-income women outside of unreliable charity care, and women are dying. Medicaid law requires the impact of these practices be considered before routinely terminating patients including for surviving alive to 65, and *Pediatric Specialty Care v. Arkansas DHS*, No. 03-1015, 03-2616 (8th Cir. 2004) held (Id.*I.Procedural Due Process*) this study is a due process right Petitioners are entitled to before this cancellation of coverage is allowed to continue. We ask you allow continuing payments on appeal while we go after these things. You may not get another case to help these women and families. For a cancer treatment program run by the government this simply cannot be tolerated.

STATEMENT

On April 12, 2017, the day before Longfellow's evidentiary hearing, Stephen walked in a copy of a submission (referred to as Ex.4 at *Pet.App.8a*): to Respondents at the Minnesota Appeals Office; and another to Ramsey County Welfare Office Respondent Ebony Phillips. That submission is excerpted at *Pet.App.58a61a*. It raised all the federal issues present in the action appealed from--and this Petition--based on just what Stephen's research had revealed about the BCCPTA program and its Minnesota counterpart MA-BC--even before the state evidentiary hearing, so this Court has jurisdiction over all those issues. And we persuaded the HSJ to address those concerns she felt she could, but Subd.16 has been misinterpreted as barring federal issues from the Agency's decision to terminate a woman's MA-BC breast cancer treatment coverage before completion of prescribed treatment.[12] Longfellow's Decision responded to our due process concerns reflected in the corrective actions and remedies provided to our concerns.

Petitioners felt we had no adequate notice required by due process, of what the Agency was doing or even talking about, but scoured the November 16, 2016 Agency Appeal Summary (the 3-pg. document is

[12] As the Court can see, the excerpts from documents filed in *Pet.App.62a63* show the immediate motion for the promised medical care benefits payment pending appeal citing the Longfellow Order, Minn.Stat.256.045subd.10 and all the federal grounds raised here, and in the Petition for Mandamus which is reprinted in whole *Pet.App.64a89a* and discussed *infra*.

reprinted at *Pet.App.46a48a)* to see how the Agency arrived at their conclusion *p.48a* that

> "It is my [former Financial Lead Delfina Reynolds'] opinion that the worker accurately applied the (MNDHS) Eligibility Policy Manual to determine that Victoria is no longer eligible for Medical Assistance for Breast/Cervical Cancer. Victoria is eligible for Medical Assistance with a $433 monthly spenddown."

The Agency's reasoning was

> "Victoria turn[sic] age 65 on November 11, 2016, and she is eligible for Medicare as of November 1, 2016, therefore she is no longer eligible for Medical Assistance for Breast/Cervical Cancer. As Victoria is no longer eligible for Medical Assistance for Breast/Cervical Cancer, Medical Assistance was determined using the MA-EX, Elderly basis of eligibility. Medical Assistance was determined for an aged individual, using the applicable policy. Spousal income is counted when determining eligibility for Medical Assistance for both disabled and aged individuals.." Id. [and was used here].

On Apr.12, 2017 (in a submission supra referred to as Ex. 4 by Longfellow at N.1) Petitioners answered, to Longfellow,

> "[Respondents] admit there that as of October [5], 2016, they had taken the bizarre action of closing Vikki's 'MA', which meant the breast and cervical cancer MA benefits she relies on for her prescribed and approved cancer treatment were [already] cut off! And they did it because they somehow concluded that (1) she was on straight MA at that time and (2) therefore [Stephen's] income should have been counted at that time, resulting in a "spenddown" requirement since July 2016 of $500.Id.

Longfellow and the Commissioner favorably agreed on the appeals claims with Petitioners, finding *Pet.App.8a*:

> "the Agency terminated [Victoria's] coverage in July 2016 and determined that she was no longer eligible for that program but

was now eligible for Medical Assistance for the Elderly Program with a spenddown Id.FF4"

And:

"In October 2016 the Agency determined that the Appellant did not meet her spenddown requirements so it sent out the notice to terminate her as of October 31, 2016. The Agency restored the Appellant's medical assistance with a spenddown for November, 2016. The Agency should also restore coverage for December 2016 for the pending appeal. The Agency has reopened the Appellant's Medical Assistance for Breast Cancer from January - April 2017 and should extend that to May 2017 while the appeal is pending and until the Agency can provide adequate notice of the program change to the applicants" [viz. Both Petitioners Stephen and Victoria]. Id.FF5" Emph.added

And:

"I find that the Agency erred when it transferred the Appellant from the Breast Cancer Program to the Elderly Program in July, 2016 because she met all of the eligibility requirements for the Breast Cancer Program at that time until November 11, 2016. The Appellant should not have been transferred to the Medical Assistance Program until December 2016. The Agency should not then have been able to terminate the Appellant due to her failure to meet the spenddown in October, 2017 since she should not have been in that program at that time." Id.FF.9

We carried our burden[13] in No. 185231 and the Agency did not,[14] we received a favorable ruling--of course--and corrective action by the Agency was ordered by the Commissioner as spelled out supra--including benefits paid pending appeal, triggering Minn.Stat.256.045subd.10, i.e. all the way "to the Supreme Court."

But instead of undertaking the corrections ordered and required by federal law and regulations[15] and U.S. Constitution,[16] the Agency sent

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[13] Pet.App.37a. The entire Agency action appealed against in No. 185231 was reversed by Longfellow's recommendations. The HSJ noted in passing that yes, there was an MA-EP program with a spenddown (she couldn't discuss the impact of this Court's ruling in *Schweiker* on penalizing Petitioners because Victoria aged to 65 and so supposedly lost any viable access to Medicaid dollars for her cancer), she didn't tie together the termination of MA-BC and any kind of "transfer" to a completely useless MA-EP "benefit" for both Petitioners. Instead she ordered the Agency to try again. Moreover, beginning in their first filing with the district court, the Commissioner admitted that the Agency "erroneously attempted" to remove Victoria in 2016 and place her on the elderly program. They did not "attempt" to do so they did it--and never reversed it, even when ordered by Longfellow to do so. But they show the Agency received an adverse decision, not Petitioners and their contention that the law requires the ordered payments pending appeal to be cut off because of an adverse decision is completely unsupported.

[14] In terms of Pet.App.41a §256.0451Subd. 17.Burden of persuasion, because "The burden of persuasion is governed by specific state or federal law and regulations that apply to the subject of the hearing," the Agency and MNDHS Respondents conceded a favorable outcome to Petitioners in *Pet.App.6a10a* because the decision was decided on those regulations applying to the subject of the hearing, which was "did the Agency action Oct. 5, 2016, reflecting a July 2016 deprivation of MA-BC and assignment of a spenddown requirement enforced Oct. 5, conform with those laws? All admit the Agency did not. Because there is specific law, the Agency cannot now claim they won by persuading the human services judge that if they had done something else (acted during November to transfer Victoria to an aged program instead of a cancer treatment program effective December 2016, and given adequate notice to Victoria permitting appeal) the Agency claims would have and should have been true.

[15] The requirements of adequate notice (42CFR §§ 431.206, 431.210) ; requirements for a fair hearing (431.220(a)(1), 431.242; ; matters to be discussed in the appeal (431.241) (i.e. Respondents were not allowed to limit appeal because Petitioner's challenged the matter of the proposed termination and transfer, or even civil rights and constitutional rights concerns with the proposed transfer excluded in the first hearing); corrective action 431.246 (including maintaining payments in place pending appeal that already applied by Longfellow and the Commissioner cited *supra*)--all of these regulations strictly regulate what Respondents can do in conducting further inquiry and remedial measures to correctly administer and protect Petitioners' rights following the Longfellow Decision. None of these requirements were met by Respondents' conduct, including the Ramsey Cty district court Judge Bartsh, and that is why a Petition for Mandamus to the Court of Appeals was necessitated.

a non-compliant notice *Pet.App.49a51a* and when Petitioners appealed their injurious and defiant intended actions, they informed us three times by notices *Pet.App.25a29a* that we would have no appeal and no benefit payments pending appeal before the event with a second and contrary HSJ Kralik *Pet.App.23a24a*.

Petitioners, concerned about the way things were going and the complexity of it had been directed by then-Commissioner Piper to the Office of General Counsel of MNDHS, and *Pet.App.30a* is the response from Associate General Counsel Brenda Kiepert-Holthaus informing us the Commissioner had no flexibility to modify the deadline in Minn.Stat.256.045subd.7 for appealing the aspects we objected to from the Constitution-free Longfellow decision.

In arguing Victoria is not entitled to benefit payments pending appeal, Respondents[17] (and the Mn.App. erroneously[18]) characterize the Longfellow Decision as an adverse decision for us. The behavior of Respondents bears some resemblance to the instructions in **§431.232 Adverse decision of local evidentiary hearing.**

If the decision of a local evidentiary hearing is adverse to the applicant or beneficiary, the agency must -

(a) Inform the applicant or beneficiary of the decision;

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[16] Including but not limited to those raised before the April 13, 2017 hearing Due Process, Arbitrary and Capricious, Privileges and Immunities, and Equal Protection Clauses of 14th Am. and 5th Am. U.S. Constitution See *Pet.App.58a*.

[17] *Pet.App.64a65a*.

[18] *Pet.App.2a*

(b) Inform the applicant or beneficiary in writing that he or she has a right to appeal the decision to the State agency within 10 days after the individual receives the notice of the adverse decision. The date on which the notice is received is considered to be 5 days after the date on the notice, unless the individual shows that he or she did not receive the notice within the 5-day period; and
(c) Inform the applicant or beneficiary of his right to request that his appeal be a de novo hearing; and
(d) Discontinue services after the adverse decision." Id.

But many of th indicia of Pet.App.6a10a run against this notion that it is an adverse decision for Petitioners and a favorable decision for Respondents. Respondents' empty official claim[19] based on the factual record including is clearly insufficient support and in fact no support for the Agency's July 1, 2017 Agency decision to terminate Victoria's MA-BC in the face of the Longfellow order, which was binding on the Agency by Subd.5.

First, it was never ruled by the district court that Petitioners failed to meet their burden in our appeal to the Commissioner. Judge Bartsh made her decision against acting on Petitioners' prompt motion to restore and contsinue beneifts based on the unfounded notion that she

[19] Judge Bartsh erroneously held that she lacked the power to order the payment of benefits based on the Longfellow Decision and order because, she claimed, Minn.Stat.14.69,Minnesota's *Administrative Procedure Act*, restricted her authority on judicial review under Minn.Stat.256.045subd.7 (even though the Commissioner and Mn.App. Judge Worke recognize that Minn.Stat.256.045subd.5 specifically allows it--see Pet.App.39a "unless the commissioner or a district court orders monthly assistance or aid or services paid or provided under subdivision 10." In truth the Commissioner already did in Pet.App.6a10). Moreover, the Act's 14.001 STATEMENT OF PURPOSE. Specifically instructs that "The chapter is not meant to alter the substantive rights of any person or agency."

could not enjoin the Agency to restore and continue the payments based on Longfellow's decision.

Moreover, that order said to Ramsey County: provide adequate notice of your intent to transfer Victoria now; give Petitioners adequate notice of what you intend and your grounds for doing so, and the opportunity for an appeal and a hearing, under 42 U.S.C. 1396a(3) (and under *Goldberg*), and all the applicable federal and state regulations, (many of which we provide here at *Pet.App.42a45a*); and correctively restore and pay her benefits pending appeal.

The Agency's multiple written refusals to provide adequate notice, pay benefits pending appeal and forward Petitioners' June 23, 2017 appeal to the state Appeals Office do not comply with the instructions of §431.232 *supra*, and certainly don't comply with the federal requirements in *Pet.App.42a44a*.

First, as we say at *Pet.App.53a* the June 23, 2017 appeal to the Agency: "Your notice of action challenged here fails to provide adequate notice of the termination of my MA-BC but instead finds me eligible (*Pet.App.49a* - "You are eligible for MA because you need services for breast or cervical cancer or a pre-cancerous condition. (HCM 0907).") but then proceeds to *Pet.App.51a* - "You have MA/BC coverage through 6/2017 per instruction of the judge to reinstate that

coverage because of your appeal and to provide you with a notice of ineligibility for that program."

The Agency's *Pet.App.26a29a, 25a* did not inform us of the decision, *or* of our right to appeal or have a *de novo* hearing (a *de novo* hearing seems to be what was ordered by Longfellow, but when we sought a fair hearing addressing what the Commissioner ordered us to have, we were told 'you have exhausted all your appeals for this program' *supra,* and the Agency did not forward the appeal to the MNDHS appeals office as state law[1] requires. We were informed June 15, 2017 that MA with a spenddown was being closed--again--because, the previous six months, which Respondents admit was the pendency of the appeal, Petitioners had not filed spenddowns for a sufficient amount of money. In fact, the Agency, again, did exactly what they did October 5, 2016--indicated a spenddown had been in effect (which as we understand it it had not), and used that as a basis for termination. June 15, 2017 page *Pet.App.49a51*.

More troubling is that the MA-BC seems to have already been terminated again, according to this notice June 15, 2017. There was no indication that there was any appeal allowed, in fact the opposite. No appeal summary was provided, violating Minn.Stat.256.0451subd.3[2] no

[1] "The applicant's or recipient's written appeal and request for hearing must be submitted to the department by the local agency. A state appeals referee shall conduct a hearing." **Mn Rules 9505.0130 Subp. 2. Appeal process.**

[2] And at the Mn.App. merits case A18-1380 below we are complaining *inter alia* that having been rejected by Longfellow, Respondents are saying they brought it back to Kralik, a second time, and it

payments pending appeal, no further fair hearing appeals for this program (MA/BC).

Even more disturbing was the statement by Teryl Nelson *Pet.App.25a* that because the issue of MA-BC termination had already been raised and supposedly determined by Pet.App.6a10a, there could be no appeal at that point, only termination. And this is exactly what was ruled by the new HSJ Kralik, who could have heard a fair hearing, at Pet.App.23a24a. For MA-BC termination there would be no hearing. First CL1 she says the statute which gives her jurisdiction to find she has no jurisdiction, Minn.Stat.256.045subd.3, is ineffective becase CL2 "There is no new appeal issue here. Appellant wants reconsideration of a previous appeal." But that is what was ordered by Longfellow precisely becuase there had not been adequate notice provided for that action proposed Oct. 5, 2016, because the laws apparently relied on did not support that action. And so the Commissioner had reversed the action and in fact called for new adequate notice and a new hearing because the June15, 2017 notice proposed tdo suspend, reduce, terminate and incorrectly pay (we say) Victoria's medical care. Subd.3Id.

Kralik's demands to drop any appeal of MA-BC termination, or to bring "new appeal issue[s]" violated Longellow's order which

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was accepted, the very same Pet.App.46a48a was recycled to provide what Judge Bartsh calls the Constitutionally required procedural process of law *Pet.App.20a21a*.

specifically included the issue raised by Petitioners in our appeal against the Agency's refusal. Moreover, Kralik directly contradicted federal regulations requiring that the matter must be included if raised by Petitioners in the appeal, which it was. § 431.241 *Matters to be considered at the hearing* Pet.App.42a. For that and many other violations we spell out, (plus the fact Kralik indicated she had no jurisdicion and yet exercised just enough "jursidction" that her "dismissal" of the matter is cited by Worke in ruling to discontinue payments admittedly ordered by the Commissioner effective July 1,2017 we ask the Court declare the Kralik action void as violating federal law; and further void as violating the requirements of the 14thAm. spelled out in both *Goldberg* and *Board of Regents v. Roth*, 408 U.S. 564 (1972).

The requirements of adequate notice (42CFR §§ 431.206, 431.210) ; for a fair hearing (431.220(a)(1), 431.242; ; matters to be discussed in the appeal (431.241); corrective action 431.246 (including maintaining payments in place pending appeal that already applied by Longfellow and the Commissioner cited *supra*)--all of these rules strictly regulated what Respondents could do in conducting further inquiry and remedial measures to correctly administer and protect Petitioners' rights following the Longfellow Decision. None of these requirements were met by Respondents' conduct, including the Ramsey Cty district court

Judge Bartsh, and that is why a Petition for Mandamus to the Court of Appeals was necessitated. She failed and flatly refused to follow her duty to maintain the MA-BC coverage and payments during the pendency of the appeal in her court, violating Minn.Stat.256.045subd.10 and the order of the Commissioner. This was not a discretionary act it was required under Minn.Stat.586.01 to discharge its function to enforce the Commissioner's June 8, 2017 order and under Goldberg et al. to protect Victoria against further erroneous deprivation of MA-BC during treatment. Kralik retroactively approved the deprivation while claiming no jurisdiction, which deprivation occurred July 1, 2017, six weeks before judicial review under Id.subd.7 was sought August 21, 2017, under direct guidance of the Commissioner's general counsel to Stephen. That was erroneous deprivation imposed willfully illegally by a second KSJ who would do what Longfellow refused to do, strike down Victoria's medical care payments during her treatment. And of course she had no power to dismiss our appeal.

The Agency did discontinue services (MA-BC) but not after an adverse decision, rather after we carried our burden of persuasion under the applicable state laws (and federal issues were excluded as set out *supra*).

Judge Worke of the Mn.App. *Pet.App.1a4a* based her entire refusal to allow Victoria to be paid MA-BC benefits pending appeal on this unconstitutional and unlawful charade by HSJ Kralik, as the new face of the Commissioner. The suggestion is that the HSJ worked her magic to make the Longfellow recommendations go away and to somehow 're-finalize' the final decision of the Commissioner. But this is not lawful.

> "In an August 30, 2017 order, the Commissioner dismissed Carlson's appeal from the subsequent notice of MA-BC termination....Petitioner's seek continued payment of MA-BC benefits until all appeals have been exhausted. They rely on the commissioner's statement in the June 8, 2018 [sic] order that the MA-BC benefits should be extended while the *appeal* [sic] is pending and until the agency can provide adequate notice of the program change to [Petitioners]....The governing statute and rule, however, provide for the continuation of benefits only dursing the pendency of the appeal to the commissioner."

Worke concludes "[Minn.Stat.256.045]Subdivision 10 requires that, when the commissioner or district court rules in favor of the recipient, benefits continue to be paid pending appeal to the commissioner, the district court, court of appeals and the supreme court." But then, inexplicably, the Mn.App. shifts to say "Because neither the commissioner nor the district court ordered the payment of benefits, subdivision 10 *does not apply here.*" It.added. In the previous page, Worke said the commissioner *did* order the payment of benefits. And the fact that there was a favorable ruling for the recipient is shown that the commissioner did order the benefits continue to be paid. And

that would not have been allowed if the Longfellow recommendations adopted by the Commissioner had upheld the October 5, 2016 Agency action which was appealed. Federal rule §431.232(d) would have required the discontinuation of those benefits.

The Longfellow ruling favored Respondents. The Agency was reversed, they were ordered to pay pending appeal, and the Agency was to provide adequate notice and that requires a hearing.

Adequate notice is defined by *Goldberg* (at 267-8) and Respondents including Judge Bartsh purport to say there was due process here under the *Goldberg* requirements. But:

> "The fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean,* 234 U. S. 385, 234 U. S. 394 (1914). The hearing must be "at a meaningful time and in a meaningful manner."*Armstrong v. Manzo,* 380 U. S. 545, 380 U. S. 552 (1965). In the present context, these principles require that a recipient have timely and adequate notice detailing the reasons for a proposed termination, and an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally. These rights are important in cases such as those before us, where recipients have challenged proposed terminations as resting on incorrect or misleading factual premises or on misapplication of rules or policies to the facts of particular cases." *Emph.Added*

Instead on June 15,2017 the Agency terminated Victoria's MA-BC effective July 1,2017 *Pet.App.51a*. Nelson said very simply "You have MA/BC coverage through 6/2017 per instruction of the judge to reinstate that coverage because of your appeal and to provide you with a new notice of ineligibility for that program."

No mention of any hearing, and in subsequent notices *Pet.App.25a29a* the Agency made it very clear we would not be allowed a hearing and that the cutoff on July 1,2017 would be a hard stop with "no further responses [] made regarding your request for MA/BC reinstatement." *Pet.App.25a* Instead of forwarding the appeal to the appeals office as 9505.0135 Subp. 2 requires, they called it a "request to appeal" and outright denied it.(*Pet.App.25a*"We have received your request to appeal the denial of MA/BC and have the program reinstatement pending outcome of an appeal you will file outside of DHS.)(*Pet.App.26a* "In your recent letter to [the Agency] Ramsey county, dated 6/23/2017...We are unable to comply with your request to reinstate your MA-BC as you are not eligible for that program.")(*Pet.App.28a* "Ramsey county received your request to appeal the closing of your healthcare benefits effective 7/1/2017. You request Medical Assistance for Breast Cancer be continued during the filing of your appeal through the appeal results. Please reference appeal decision docket number 185231[Pet.App.6a10a], for your previously filed appeal. Per Judge Ellen Longfellow, under section "Conclusions of Law", paragraph 4, "When the appellant turned 65...Because of this ruling , there will be no re-assessment of your eligibility for Medical assistance Breast cancer - MA/BC")

Armstrong supra says the "The fundamental requisite of due process of law is the opportunity to be heard." *Grannis v. Ordean,* 234 U. S. 385, 234 U. S. 394 (1914). The hearing must be "at a meaningful time and in a meaningful manner."*Armstrong v. Manzo,* 380 U. S. 545, 380 U. S. 552 (1965). Clearly, the meaningful place and time in this case must have been *after* receiving adequate notice, not before. In defying the June 8, 2017 Commissioner order, the Agency ignored the directive to them to ensure as the Commissioner required *Pet.App.8a* para 5 the payments while the appeal is pending and until *they*, "the Agency *can*[3] provide adequate notice of the program change to the Appellants."Emph.added

Here as in *Goldberg* itself, the "proposed terminations rest[] on incorrect or misleading factual premises or on misapplication of rules or policies to the facts of particular cases."

Reasons for Granting the Petition

Petitioners are aware of this Court's Rule 10 p. 6 that

> "A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."

However, here the asserted error consists of a decision by the court below that misstates the law, saying that it *is* lawful for an Agency to

[3] I.e. the Agency so far had not done it, they failed to do it.

defy an order like Longfellow's by claiming appeals are "exhausted" for that program, refusing to cooperate in paying benefits pending appeal, or provide an adequate appeals summary as required by Minn.Stat.256.0451subd.3. The Minnesota Supreme Court by letting stand the erroneous Worke decision "has decided an important federal question in a way that conflicts with relevant decisions of this Court." *Goldberg, Roth, Pediatric Specialties, Manzo, Grannis* all *supra.*

It's important not only for Victoria but for the "at least hundreds" of women in Minnesota alone who are arbitrarily and routinely denied coverage because they age alive in treatment to 65 and are cancelled. That question is--while they are challenging their case or the ordered "program change" as a whole to MA with a punitive spenddown[4]--do they have the continuing right to have their medical care covered, even just the 20% or more Medicare does not pay while they are challenging the might and proffered legal grounds of the government? Especially, when as in this case they have received an outcome in an evidentiary hearing *favorable enough* that the commissioner has, it is admitted, ordered that those payments continue to be made pending appeal? And apparently Minn.Stat.256.045subd.10 does apply and that would extend that right to the "supreme court".

[4] Down to 80% of poverty level for themselves and their spouse, if any, to deter them from spending down with medical payments to access Medicaid dollars.

We are asking this Court to grant this petition and reverse the Court below, and to find that indeed it is a duty imposed on Judge Bartsh by law (mandamus) and on a motion for injunction, as many have been made, and find it is error not to grant that petition, and those motions (*Pet.App.17a*), to restore and continue the payments for Victoria's medical care while she is in breast cancer treatment prescribed by her doctor under the program and while the merits of the appeal have not yet been resolved, following a favorable decision by the Commissioner June 8, 2017.

This single passage below written by the district court Judge Bartsh points out how glaringly wrong the procedure approved by the Minnesota Supreme Court, on multiple, decisive counts.

> "Appellant's pre-termination hearing on the merits of her MA-BC eligibility, and subsequent prehearing confirming she was properly noticed before terminating her from the MABC program - after the Commissioner determined her ineligible - satisfies the Fourteenth Amendment Procedural Due Process Clause. Public assistance recipients are entitled to a hearing prior to the termination of benefits "to produce an initial determination the validity of the welfare department's grounds for discontinuance of payments in order to protect a recipient against erroneous termination of his benefits." Pet.App.20a21a

Here the district court and Judge Bartsh ignored and continued the erroneous termination of benefits claiming Kralik dismissed the appeal in Longfellow's decision as described supra. The material facts are undisputed, but the court was told of determinations erroneously made

without civil rights and constitutional being resolved, and without being allowed to be resolved.

It is certainly not indisputable that Longfellow "found Petitioner ineligible for the MA-BC program. [*Pet.App.8a9a*FF10]." *Pet.App.64a*.bottom paragraph excerpting Comm.Resp. Oct.4, 2018 to the Pet.Mand.66a91a. In the first place, civil rights and the U.S. Constitution were erroneously taken off the table by the Commissioner while we tried to get a straight answer about what the Agency did and why, and to meet the legal deadlines imposed in this complex process by Minnesota law. Therefore no definitive decisions could be made resting on that appeal at that hearing that would bar a further hearing by *res judicata* because the record was incomplete and our procedural due process rights had not yet been granted. So to discontinue MA-BC benefits at this point in the appeal would be to conflict with *Goldberg* and other case cited, and with the 14th Am.,U.S. Const. DPC, both procedural and substantive.

Moreover all that Longfellow actually found about the action was that it needed to be reversed under applicable state medical assistance laws, and it was reversed; she then observed hypothetically that at some point in December 2016, *could have* transferred Victoria to MA for the aged (but was at the point the action was actually taken barred by law and by Victoria's continuing eligibility for MA-BC). But since

that hypothetical was not the action taken, that issue was not before Longfellow, and has not been determined.

> "[W]hen the Appellant turned 65 years old, she was no longer eligible for the Medical Assistance for Breast Cancer program and at that point for December 2016, the Agency could have transferred the Appellant to the Medical Assistance for the Elderly program. The Agency did not provide adequate notice to the Appellant concerning this program change. It will need to provide adequate notice now to take her off of the Breast Cancer Program and enroll her in the Elderly program." *Pet.App.8a9a*

We believe based on the law that the Respondents by simply selecting out a few initial eligibility criteria from Minn.Stat.256B.057subd.10 (age and Medicare eligibility) did nothing to prove that for women already enrolled as eligible recipients of MA-BC under the federal BCCPTA program they can be removed just because they attain age 65 and Medicare begins to pay 80% of much of their treatment. We certainly disagree that because of this Court's ruling in *Schweiker v. Hogan,* 457 U.S. 569, 598 (1982) Congress has provided that Victoria can't even access Medicaid dollars at age 65 without spending down to 80% of the poverty level. Or that Congress would agree that it was intended by law that she would be "transferred" to a program where we made a "compelling case" that transfer "effectively bars her from obtaining continued medical treatment for her breast cancer." *Pet.App.10a*CL8

And we believe it's just as likely that this is why the Agency refused to cooperate with the Longfellow-derived order of the Commissioner to

provide a legal basis for this transfer and present it to us as it is that somehow under some law we had "exhausted" our appeals under the program.

I. The Court Should Grant Certiorari to Resolve the Effects of the Circuit Split on *Younger*, *Burford* and *NOPSI* Abstention which until *Carlson* (2013) shielded Minnesota from federal court scrutiny, risking the rights and entitlements, privileges and immunities of eligible recipients of federal programs such as Medicaid

This Court should grant certiorari to bring the law of states within the Eighth Circuit, like Minnesota into line with the required federal supremacy in upholding the privileges and immunities created by the federal Constitution and Congressional intent, here especially for targeted cancer victims whom Congress intended to save and whom Minnesota, by exercising its option to participate, obligated itself to protect and serve.

The effects of Minnesota's treatment of federal eligible recipients which this Court attempted to strike down in *Carlson* and *Sprint* supra, have not been eradicated, in part because of the conflation within the appeals circuit of *Younger* and *Burford*, effectively reserving the issue of the legal rights of federal cancer patients for state administrative procedures without the benefit of Constitutional protection and civil rights defenses, where they are subject to

competition with other fiscal priorities of the 87 counties and the Commissioner.

In court the Commissioner is maintaining that *Schweiker* supra empowers the state to deter participation in Medicaid by women at 65 years of age, even though in MA-BC cancer treatment, by requiring a harsh, 80% of poverty spenddown. "Medicaid is a program of limited funds that cannot provide meaningful benefits to everyone. See *Schweiker v. Hogan*, 457, U.S. 569, 598 (1982). Pet.App.19a These kinds of rules simply won't work for cancer patients.

They argue the women are not entitled to any equal protection of the laws under the 14th Am. at all! Id. They want to expand Medicaid but are willing to risk federal cancer patients' rights to do so.

As described in *NOPSI*, a key case in the *Sprint* and *Carlson* decisions at 350,

> "(a) The *Burford* abstention doctrine -- under which federal [] courts must decline to interfere with complex state regulatory schemes in cases involving (1) difficult state law questions bearing on policy problems of substantial public import, or (2) efforts to establish a coherent state policy regarding a matter of substantial public concern..."

Here Minnesota's and the Commissioner's regulatory schemes in cases like this are abused to withhold ordered MA-BC payments pending appeal, resulting in yet anotherr erroneous deprivation of an eligible recipient's cancer treatment coverage. While the state's

administration of federal programs has been nominally modified by *Carlson* supra because they can no longer bar federal hearings by citing *Younger*. what's left in place is the remnants of *Burford*, the continuation of (constitution-free) administrative zones featuring complex state regulatory schemes inside Minn.Stat.256.§045 Administrative and Judicial Review of Human Services Matters. But as this case shows, the efforts to establish a coherent state policy regarding the critcal matter of treating the women enrolled in its MA-BC program is not aided by the deviation from this Court's due process requirements prior to any discontinuation of these medical assistance payments, but harmed, as are the patients.

And the problem raised here is the enormous latitude the Minnesota Legislature has, allegedly created, where the district court, rather than protect the federal legal and constitutional rights of cancer patients in federal- and state-sponsored cancer treatment itself, through coverage of medical costs, is making unstructured and unguided decisions, arbitrarily and capriciously, to modify federal requirements in order to exclude the patients from things like the Equal Protection Clause and Due Process Clause and others raised at *Pet.App.58a61a*. Here it has encouraged the Agency that they can get away with discontinuing payments to retaliated against and injure an appellant. Playing with breast cancer.

We urge the Court to exercise its discretion to again require Minnesota to protect the federal rights and entitlements, privileges and immunities of Petitioners, especially Victoria who is in cancer treatment that is enabled by There are compelling Rule 10 reasons for this Court to grant certiorari and to command the Minnesota Supreme Court to grant mandamus based on a clear duty of law to ensure Victoria--and any other of the hundreds of cancer patients enrolled in MA-BC, or who have been and are still alive and have not completed their cancer treatment prescribed under 10(a)(2)--are not continually exposed to brutal need as they face down their diagnosis of breast or cervical cancer.

A. Minnesota Has Split With States Outside the Eighth Circuit in Frustrating Federal Rights Through Abstention and bypassing Constitution for decades up to *Carlson v. MNDEED*[5]

As *Sprint* pointed out in their successful cert petition leading to overturning decades of abuse in Minnesota and the 8th Cirscuit,, "cases involving issues of federal law that routinely go forward in federal district court in other circuits may now be heard only by the state courts in the 8thCir....and the 8thCir has now interpreted *Younger* abstention to apply to essentially all state agency cases, even those dominated by [federal] issues." The abuse of the *Burford* doctrine

[5] *Carlson, Stephen W. v. MN Dept. of Employment, 13-8124 U.S. (2013),* which involved Petitioner Stephen in a bankruptcy adversarial in a filing of both Petitioners', during which Victoria's 2013 SAGE and MA-BC diagnosis occurred, involved a questionable cut-off of Stephen's emergency unemployment benefits which put us at risk. The Court granted certiorari and remanded back to the 8th Cir. who remanded back to the district court. The state argued two apparently contradictory positions, one that it had a compelling right to finish its administrative proceedings to a conclusion, barring federal jurisdiction under *Younger*. But that it *had* finished its adminsitrative proceedings barring the federal court from proceeding on grounds of *res judicata*. A D-MN federal court dismissed the case and we lost our home to foreclosure.

is no less destructive to our rights and the rights--and lives--of hundreds of enrollees in Minnesota's MA-BC.

This Court should act to stop Minnesota's state courts from abusing the Constitutional and civil rights of cancer patients by removing them fair hearing appeals under Medicaid's requirement and then removing Constitutional rights like adequate notice, payments pending appeal after a favorable commissioner's decision and equal protection of the laws. This is extremely dangerous and its impact needs to be studied.

B. Minnesota Violates Medicaid Act in Denying Meaningful Hearings While Routinely Barring Women from Due Process and Equal Protection to Protect Ongoing Breast Cancer Treatment from Degradation

We believe it is intolerable and shocks the conscience that the state so cavalierly cancels the Medicaid (Medical Assistance) of women enrolled and receiving ongoing breast cancer treatment

To cite *Kelly v. Wyman*, 294 F.Supp. 893, 899, 900 (1968)

> "one overpowering fact []controls here. By hypothesis, a welfare recipient is destitute, without funds or assets. . . . Suffice it to say that to cut off a welfare recipient in the face of . . . 'brutal need' without a prior hearing of some sort is unconscionable unless overwhelming considerations justify it."

> "The interest of the eligible recipient in the uninterrupted receipt of public assistance, which provides him with essential food, clothing, housing, and medical care, coupled with the State's interest that his payments not be erroneously terminated, clearly outweighs the State's competing concern to prevent any increase in its fiscal and administrative burdens." *Goldberg* Holding 2.

II. The Decision Below is Inconsistent with this Court's Jurisprudence Establishing the Primacy of the Federal Law and Constitution in Deprivation of Federal Rights of Government Breast Cancer Patients

This Court since *Goldberg* and its antecedents has been very clear that for these federal programs which states optionally obligate

themselves to and indeed all the Respondents including Judge Bartsh pay lip-service to Goldberg requirements while reducing them to "informal proceedings" such as those protected by Minnesota through various kinds of abstentions by the federal courts and by limiting the ability of eligible recipients as has occurred here to even raise federal requirements or the U.S. Constitution, which we believe is highly unconstitutional.

Equally clear is that federal rules, statutes and court precedents are required to force the states to adequately administer the program, so that it meets its life-saving and health disparities-reducing purpose, for which the federal taxpayer funds and federal mandates are created in the first place. This requires allowing Petitioners not only to seek protection of Victoria's cancer-treatment coverage until the prescribed treatment is completed, but to participate in the vindication of those rights. And in order to do that the Agency and Commissioner must meet their obligations. This includes providing the legal basis for adverse actions like the termination of July 2016 of Victoria's MA-BC benefits, which was reversed by Longfellow and the Commissioner June 8, 2017--but also to commit not to discontinue benefits until due process We consider Judge Bartsh's description of Constitutionally adequate procedural process supra to be incomprehensible and really tragicomical, because of the tragic results of cutting back a woman's

medical care during cancer treatment. This results in increased avoidable deaths from substandard care created by Minnesota's practices. Enrollees including Victoria are entitled by the 14thAm. DPC and EPC and the equal access provision of Medicaid §1396a(a)(30)A to an impact study of this practice of program change to a prohibitive, punitive spenddown.

Goldberg held "benefits are a matter of statutory entitlement for persons qualified to receive them," 397 U. S. 262, and that due process affords qualified recipients a pretermination evidentiary hearing to guard against erroneous termination. The Court stressed that

> "the crucial factor in this context . . . is that termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits."

Pet.App.1a4a puts Minnesota breast cancer patients enrolled in MA-BC at grave risk, because it arbitrarily and capriciously deprives any woman of medical care payments, who attempts to challenge a broad practice by Ramsey County and apparently through all the 87 counties supervised by the Commissioner of MNDHS, broadly depriving enrollees of any medical assistance funds. All women are automatically deprived by Respondents' erroneous interpretaiton of the BCCPTA and MA-BC statutes. No one has challenged this, according to the Commissioner in the March 2, 2018 hearing before Judge Bartsh.

What the Agency did was to put Petitioners right back in the same position they keep all the other cancelled enrollees--so that, contrary to Goldberg et al., we are less able or perhaps unable to bring this litigation, self-represented to clarify this urgent federal issue. This issue is literally comparable to this Court reviewing an execution before it is carried out, because the risk of death from breast cancer and complications is very real.

As such the Minnesota Supreme Court in refusing to review it, continues and furthers the deterioration of federal protected rights in Minnesota, which our family has been affected by in two cases brought to this Court.[6] Together they constitute severe financial toxicity[7] experienced by our family affected since 2013 by breast cancer, here the case of a low-income patient screened by the federal program, SAGE in Minnesota[8] and partially treated by BCCPTA (MA-BC in Minnesota)--"partially" in the sense of being incompleted, i.e.

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[6] The instant one and *Carlson, Stephen W. v. MN Dept. of Employment, 13-8124U.S.(2013)*(in which Stephen prevailed as this Court granted IFP and certiorari and remanded the case to the 8th Circuit U.S. Court of Appeals.

[7] The Court may take judicial notice of a recent study by https://www.cancer.gov/about-cancer/managing-care/track-care-costs/financial-toxicity-pdq Cited in 'What is 'financial toxicity' for cancer patients?' https://www.philly.com/health/consumer/cancer-treatment-financial-toxicity-20190306.html?utm_medium=social&utm_source=t.co&cid=Inquirer+Twitter+Account&utm_campaign=Inquirer+Twitter+Account

[8] The Court may take judicial notice of the content of Minnesota's MA-BC website: https://mn.gov/dhs/people-we-serve/adults/health-care/health-care-programs/programs-and-services/breast-cervical-cancer.jsp . It provides in relevant part for the question: "When will my coverage end?" that "Your coverage will end when your doctor says you no longer need treatment for your cancer." This cites the federal law, not state statute.

terminated prior to completion for those patients who survive that long.

Pet.App.10aCL8 describes Respondent Commissioner's own findings verifying the impact of financial toxicity on the course of treatment itself based on the evidentiary hearing.[9]

CONCLUSION

The petition for a writ of certiorari should be granted. Respectfully submitted,

Victoria Carlon
March 18 2019

Stephen W Clark
Mar 18, 2019

[9] Petitioners' IFP declaration also details the difficulties we face